

REMARKS

By the present amendment, Applicant has amended Claims 1, 2 and 6. Claims 1-6 remain pending in the present application. Claim 1 is the only independent claim.

In the recent Office Action the Examiner rejected Claims 2 and 6 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended Claims 2 and 6 to correct the indefiniteness therein, and respectfully submits that Claims 2 and 6, as amended, meet the specific requirements of 35 U.S.C. § 112, second paragraph.

In the recent Office Action the Examiner rejected Claims 1 and 4 under 35 U.S.C. § 102(b) as being anticipated by Brown (US 5,615,516). Claims 2, 3 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown (US 5,615,516). Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown (US 5,615,516) in view of Granger (US 5,661,926).

Initially, Applicant would like to point out that the Brown patent, applied by the Examiner in his rejection of the claims, has not been officially made of record on a Notice of References Cited, form PTO-892.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Applicant's invention is a Christmas tree watering system which automatically supplies water to a Christmas tree support base water receptacle as water is needed, and keeps water at a constant level above the bottom of the tree trunk while never overflowing the support base water receptacle. This is accomplished by use of a reservoir that is sealed, but for the bottom outlet from which the water in the reservoir flows through a conduit to the support base water receptacle. The conduit includes a strip of hook and loop fastener material for securing its lower end to the trunk of the tree at a point approximately one inch above the bottom of the trunk. In operation, when the device is secured to a Christmas tree that is positioned in a conventional tree stand, water within the reservoir flows down the conduit and into the water receptacle in the tree stand. As water flows out of the conduit, air bubbles back up the conduit and into the reservoir. The water flowing out of the conduit flows into the tree stand until the water level within the tree stand reaches the level of the lower end of the conduit or a level about one inch above the bottom of the tree trunk. Once the water level reaches the lower end of the conduit, the water creates a seal around the end of the conduit and thereby prevents air from flowing up to the reservoir. This creates a vacuum in the reservoir that stops the flow of water out of the reservoir. As the tree absorbs water, the water level in the tree stand continues to drop. When the water level drops to a point below the lower end of the conduit, the seal is broken and air is allowed to bubble up to the reservoir, thereby allowing water to flow down from the reservoir. The water flows until the water level in the tree stand reaches a point where it seals off the lower end of the conduit again. This cycle continues automatically.

The patent to Brown (US 5,615,516) discloses a Christmas tree watering system having a receptacle 12, the receptacle having an inlet 22 and an outlet 28. A flexible tube 30 is attached to the outlet 28 and extends down to the support base receptacle 6. A user replenishes the water in the base by pouring water into the inlet 22 of the receptacle 12. The water flows out of the outlet 28, through tube 30 and into the base 6.

Basically, the patent to Brown is merely a funnel that directs water from a remote location to the receptacle of the Christmas tree stand. In operation, Brown differs from Applicant's invention in that the tree owner will still have to go under the Christmas tree to check on the water level in the base to make sure that it is not too low or too high. There is a danger of overfilling and having the water overflow the base. And, there is the possibility of the water becoming too low, unless the tree owner is vigilant about going under the tree and checking the water level on a regular basis. Applicant's invention differs from Brown's in that, by its structure and operation, it will automatically deliver water to the support base receptacle and tree trunk as needed, and will shut off automatically when the water reaches the proper level.

This operational difference is accomplished by a structural difference, which is recited in amended Claim 1. In this regard, Claim 1 now recites that the water reservoir of Applicant's system is a container with a bottom outlet, wherein the bottom outlet is the only opening into and out of the reservoir. This limitation is not disclosed in the patent to Brown. In Applicant's view, since each and every limitation recited in amended Claim 1 is not

shown in the patent to Brown, the rejection of Claims 1 and 4 under 35 U.S.C. § 102(b) as being anticipated by Brown is improper, and should be withdrawn.

Further, the Brown reference neither suggests nor makes obvious the modification of a reservoir comprising a container that is sealed, but for the bottom outlet. MPEP § 2143 states: "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." A review of the Brown patent, reveals that there is nothing in the teachings of this relied upon prior art reference which would have suggested the desirability, and thus the obviousness of making the reservoir 6 a container with only a bottom outlet, said bottom outlet being the sole opening into and out of said water reservoir. It is therefore Applicant's conclusion that the teaching of Brown fails to establish a *prima facie* case of obviousness.

The Granger patent, relied upon by the Examiner in rejecting dependent Claim 6, and the references made of record in the present application but not applied against any of the claims, have also been carefully reviewed, however, Applicant finds nothing therein

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which would overcome or supply that which is lacking in the basic applied prior art reference noted above.

The claims in this application have been revised to more particularly define applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the above-noted reasons is respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Gibson", is written over the typed name.

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Attachments